

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SIXTH REGION**

In the Matter of:

ROBERT ORR-SYSCO FOOD SERVICES, LLC

Employer¹

and

Case 26-RC-8160

**TEAMSTERS LOCAL 480, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

Petitioner²

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act for the following reasons.⁴

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 17, 2000**.

DATED, at Memphis, Tennessee, this 3rd day of May, 2000.

/s/

Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

- 1/ The name of the Employer appears as amended at the hearing.
- 2/ The name of the Petitioner appears as amended at the hearing.
- 3/ The Employer and Petitioner have filed briefs, which have been duly considered.
- 4/ The Employer is engaged in the wholesale distribution of food and related products at its Nashville, Tennessee, locations. It has a main warehouse of about 400,000 square feet, located at One Heritage Plaza, and a Cash and Carry small warehouse and outlet of about 10,000 square feet located about 5 or 6 miles away.

The Petitioner is limiting the unit sought to that of all main warehouse employees including battery chargers, forklift, selectors, receivers, dry good and freezer employees, loaders, order pullers, and sanitation employees. There are approximately 150 employees in the unit sought by Petitioner. Excluded from this unit would be all office, clerical, professional, salespersons, city and road drivers, shop mechanics, and supervisors.

The Employer contends that the only appropriate unit would be a unit of all operations employees, which includes both warehouse and transportation employees of the Employer. This also includes the employees at its Cash and Carry warehouse operation. There is no history of collective bargaining at this Employer, however, there have been two past elections, one was a Decision and Direction of Election in 26-RC-6578 in 1983 and the other was a Stipulated Election in 26-RC-7050 in 1988. The Parties requested that administrative notice be taken of these cases. The unit in each of these cases included all warehouse employees plus the tow motor mechanics, Cash and Carry warehouse employees and beverage/chemical technicians.

Since the time of these elections, the Employer has a new president who, the Employer contends, has instituted significant changes in the Employer's operations. There has been a 15-18 percent increase in sales and the delivery system was changed so that the error rate for shipments to customers was reduced to one for every 1800 cases delivered from one for every 300 cases delivered. The president wants functional integration so that there is fluid motion from the time the orders are received and entered, until the customer receives the goods ordered. The Employer has further integrated its business so that the entire operations division is under one vice-president John Cash. However, the operations division is divided into warehousing, and transportation. All warehouse employees are under warehouse director Jerry Littrell. All transportation employees are under transportation vice-president Steve Haynes. The Employer now has common yearly meetings with all operational employees, as well as common accident review board, training, safety, orientation, policies and procedures, quality and record keeping. In addition, the Employer also has

common family benefits for all its employees which include tail gate parties for the Tennessee Oilers, company picnic and rodeo, baseball tickets to the Nashville Sounds, hockey tickets to the Nashville Predators, and a golf outing.

All employees are hourly paid and are eligible for the same extensive fringe benefits including insurance, pensions, holidays, and vacations. Selectors, loaders, and some drivers receive service level pay for accuracy in their job, while all jobs not eligible for service level pay can get a quarterly safety bonus. All employees are furnished a similar uniform, however, only the drivers are required to wear them. Other employees have the option to wear the uniform or not. All employees punch a clock, with the exception of the drivers who are not domiciled in Nashville and who work out of a transfer lot. These drivers sign a time sheet.

Generally, the order process involves receiving the orders, processing the orders that evening, loading them the night they are received, and delivering them the next day. Some big accounts, however, want the order delivered the same day it is received. Therefore, the Employer has day warehouse selectors who pull these special orders, usually perishable items, and they are assisted by the fresh express drivers who help load and deliver the products. This service to its "gold" customers located in the Nashville area is done six days a week whereas regular delivery service is only five days per week.

The Employer now has a common orientation program for its employees in transportation and the warehouse. Along with this about 24 months ago, the Employer began cross training which involves selectors and loaders riding with drivers and drivers working with selectors in the warehouse. This was instituted by the new president because he wanted everyone to work as one unit and take care of the customers and improve service to the customers.

The Employer also presented evidence of employees permanently transferring among its different departments. There have been numerous transfers both voluntary and involuntary within operations. However, the vast majority of these permanent transfers have been within the warehouse and transportation departments themselves, while transfers from warehouse to transportation and vice versa have been very limited. The Employer also has a modified duty log that provides for a change of job for an employee who is injured and cannot perform his or her regular job due to a lifting or standing restriction and this allows them to temporarily transfer to a job that they can perform. Employees from both transportation and the warehouse are on this list. However, using calendar year 1999 as an example, transfers from warehouse to transportation or vice versa appear to be minimal.

The Employer operates a coordinated system of food delivery among its warehouse, transportation and cash and carry operations in order to effectively serve its customers. The Employer receives goods usually by truck from

suppliers at its receiving dock after a receiver and quality control employee verify the quantity and quality. These employees will then put a label on the product to indicate the position in the warehouse where the product should be taken, the expiration date and received date. The product has a bar code that will reflect which forklift driver picks up the pallet and where it is taken. The Employer has both perishable and dry fork lift drivers who put the product in the proper area of the warehouse. The Employer's warehouse has storage areas for frozen goods, perishable goods and dry storage. The warehouse has a "hi-rise" area where goods are stocked that do not have a high turnover rate.

The Employer has inventory control clerks who compare the inventory to the cycle count list. Some products have to be counted daily, while others only have to be counted every five or ten days. The inventory control clerks make sure that the correct product is in the correct location in the correct quantity so that the Employer will have the correct fresh quantities to ship to customers as the orders come in. The orders that come in are put into computers located at the warehouse. The router lays out the sequence of orders using a computer and a software system called RoadNet. The staging done by the router for the warehouse and delivery drivers is done so that the order to the customer can be delivered in an efficient manner.

The information from the router is transmitted to the warehouse clerk who prints up labels and takes them to the order control desk. These labels are distributed to the selectors who will pick the merchandise from the dry area, frozen area, chilled area and hi-rise area. Once the goods are placed on a pallet they are staged on the perishable or dry dock. The checkers will determine if the order is correct for the driver to make the delivery to the customer. After the checker is finished the loader will wrap the pallet with shrink wrap to protect it and load it on a trailer. The checker inspects the trailer to make sure that it is safely and efficiently loaded.

Just as the warehouse has three temperatures to store its goods so do the delivery trailers have three temperatures. The front area of the trailer has a temperature of down to minus five degrees, and frozen products are loaded into the front of the trailer. The middle of the trailer has a temperature of around 40 degrees and meats, dairy products, and vegetables are loaded into this area. The back of the trailer holds the dry products such as paper goods, canned goods and other items. The trailers have bulk heads that divide the three sections of the trailer. Typically, the frozen items are loaded first, and the bulk head is put into place. The chilled products are then loaded and the second bulk head is put into place. The dry products are loaded last. The trailer is loaded by both a perishable loader and a dry loader. The spotter will move the trailer from the perishable part of the dock to the dry dock for final loading. Once the trailer is loaded, the spotter will return and move the loaded trailer to an area where the driver will pick it up for delivery. The perishable loader, the dry loader and the

spotter work together to keep the trailers moving in order to properly and efficiently load the trailers.

There are three types of truck drivers employed by the Employer and they are delivery, shuttle and fresh express. There are 147 delivery drivers, about 60 of whom are not domiciled in Nashville. There are 32 shuttle drivers that shuttle the loaded trailers from Nashville to the Employer's shuttle yards located in the Tri-Cities area of Tennessee and Paducah, Kentucky; Jackson, Tennessee; Cookeville, Tennessee; Chattanooga, Tennessee; and two in Knoxville, Tennessee. These yards are utilized so that drivers not domiciled in Nashville can pick up a loaded trailer and still have enough hours under DOT regulations to make deliveries to the Employer's customers. The shuttle drivers return to Nashville after consolidating their trailers from the shuttle yards. They may on occasion make a delivery to a customer. There are four fresh express drivers who deliver products to the customer the same day the order is received.

The unit sought by the Petitioner does not include the Employer's Cash and Carry location where it services its customers who want goods in smaller lots and who do not justify a delivery by truck. Also, some large customers, who may want goods and not want to wait for next day delivery, go to the Cash and Carry location and pick up their merchandise. The Employer also has some orders that come into the main warehouse that are picked and then carried to the Cash and Carry location for pick up by the customer. There are about nine Cash and Carry employees who receive the product, count it, acknowledge it, and then put it away either on the shelves or in the reserve area. They handle the same type of products as the main warehouse and sell dry product, frozen product, and chilled product. However, they do not have a full complement of inventory as they do not possess the necessary space. Accordingly, one Cash and Carry employee transports daily merchandise from the main warehouse to the Cash and Carry, due to customers calling in and wanting merchandise that the Cash and Carry does not have in inventory. It is estimated that this employee spends as much as 50 percent of his time going between the main warehouse and the Cash and Carry location. It was estimated that about 90 percent of the Cash and Carry business is wholesale as opposed to retail which the Cash and Carry also does for the general public.

Likewise, the Petitioner does not seek to include the beverage/chemical technicians who are located in a shop at the Cash and Carry location. There are about eight employees whose main duty is to repair beverage and chemical equipment. This equipment is supplied to the customer and the technicians either go to the customer's location or do the repairs in their shop. They may take a replacement machine with them and exchange it for the equipment in need of repair and return to the shop to repair it. They also may schedule a machine to be taken to the main warehouse to be delivered to the customer by a regular delivery truck. The beverage/chemical technician may meet the driver

and they may deliver the equipment together or either one may deliver the equipment.

The Petitioner does not seek to include transportation department employees which include nine truck mechanics as well as two tow motor mechanics. They are located in a shop which is on the Employer's main warehouse property located about 500 feet from the warehouse. According to the Employer's witness, these positions work interchangeably under the common supervision of the maintenance manager. If there is a need for extra help in the repair of fork lifts, the truck mechanics will fill in and likewise, if there is need for help in repairing a trailer or truck the tow motor mechanic will fill in. There is no certification required to be a mechanic. However, the Employer seeks to hire experienced mechanics and also sends its mechanics to school at various times. The Employer encourages its mechanics to become certified. The tow motor mechanics spend a good part of their time in the warehouse repairing fork lifts and tow motors. Most minor repairs are done in the warehouse, whereas most preventive maintenance and major repairs are done in the shop. The truck mechanics spend all their time in the shop area and do not have any contact with warehouse employees. On the basis of the entire record before me including the prior decision and stipulation, I find that the contact the tow motor mechanics have with the warehouse employees, when they spend time in the warehouse doing repairs on the equipment used by the warehouse employees in the course of their duties, gives them a sufficient community of interest to be included in the unit sought by the Petitioner. They like the battery changer, who daily changes out the batteries in the fork lifts and pallet jacks used by the warehouse employees, have the same supervisor. The Petitioner seeks to include the battery changer in its unit.

The issue, herein, is whether the unit petitioned for by the Petitioner is an appropriate unit. The Petitioner has limited its unit to include only the employees in the warehouse at One Heritage Place, Nashville, Tennessee, excluding the transportation employees as well as the employees employed at the Employer's Cash and Carry warehouse location in Nashville, Tennessee, including the beverage/chemical technicians. The Petitioner does not seek to include either the routers or dispatchers and the parties stipulated that those positions were properly excluded from any appropriate unit. The remaining positions in the transportation department that the Petitioner would exclude and the Employer would include are as follows:

TRUCK SPOTTER - There are five spotters; three on night shift and two on day shift. These positions, like the drivers classifications, are required to have a Commercial Drivers License because they use a tractor to move the trailers around the yard and from dock to dock as necessary for loading and unloading. Their primary job duty is to position trailers in order to facilitate fleet operations. They move the trailers from the dock to the area to be picked up by the drivers or shuttle drivers. They also move the trailers with back hauls to the dock to be

unloaded. The spotters have very limited contact with warehouse employees and do not come into the warehouse to do any work.

INBOUND SCHEDULER - This individual assigns times to the dispatchers to deliver inbound goods. The dispatcher directs the drivers of the inbound goods to which door they can back up to unload their goods. The record does not reflect any contact this one individual may have with warehouse employees other than the dispatchers who are not in the unit.

DOT COORDINATOR - This individual reports to the vice-president of transportation and the job description for this position states that it is primarily responsible for all clerical support needed within fleet operations. The record reflects that this individual works with the drivers to make sure that their DOT logs are correctly filled out and are accurate. The record does not reflect any contact or interaction with warehouse employees, but does indicate that this position assists supervisors, dispatchers, and the vice-president of transportation with various assignments.

FLEET MAINTENANCE COORDINATOR - This individual is responsible to the fleet maintenance manager. The job description for this position reflects that the individual is primarily responsible for all clerical support needed within fleet maintenance. The fleet maintenance coordinator receives the parts into the system. This individual counts the parts in the system and maintains inventory records. This individual acts as a back up for the parts coordinator during vacations and is responsible for entering the payroll on a daily basis. The record does not reflect any contact with warehouse employees.

PARTS COORDINATOR - This position is responsible for buying parts. This individual reports to the fleet maintenance manager. The job summary for this position reflects that the individual receives, stores, and issues spare and replacement parts, equipment, and expendable items used in garage operations. The duties of this job also include initiating the inventory of parts and equipment and maintain inventory records. The record does not reflect any contact with warehouse employees.

SAFETY LANE ATTENDANT - These five individuals perform work similar to the truck spotters. These employees are supervised by the fleet service manager. Their duties require them to perform DOT post-trip inspection. They move equipment around the yard and check the fluid levels of the tractors oil, water, and fuel. They move tractors to the wash bay and perform minor repairs such as replacing tail lights etc. The record does not reflect any contact with warehouse employees by these employees.

BUILDING MAINTENANCE - This position reports to manager of facility services. There is no record testimony on this position, however, the job description duties listed are to repair and maintain all physical structures on

company premises. These duties include all electrical, mechanical, plumbing, and painting repairs as well as replacing worn parts.

WAREHOUSE BILLING CLERK - The three individuals in this classification work at the order control desk. When a selector finds that an error has occurred in the inventory list and no product is available, the selector takes the label to the billing clerk who will indicate on the invoice that the product was "warehoused out" so both the driver and customer will know that the product is not available for delivery. The warehouse billing clerk is also responsible for recording "catch weights" and "random weights". These are products that the Employer sells by the pound, like hams, turkeys, and other items. These items must be entered into the computer by the warehouse billing clerk so that the driver will have a correct invoice. The warehouse billing clerk gives the driver his manifest, load map sheet, and invoices for his trip.

OTHER INDIRECT EMPLOYEE - This individual has the responsibility to make sure that the space is available to store the products, and that the products are in the correct location. He also moves products to positions that will make for a more efficient pick.

Notwithstanding the efforts of the Employer to integrate its entire operations division, the Petitioner has put forth a very convincing case that most of the transportation employees are properly excluded from the unit it seeks. As was found in the prior decision, the drivers and some of the transportation employees not sought by the Petitioner have very limited contact with the warehouse employees. The drivers have substantially different duties, hours, places of work. In addition, they earn about \$1.00 more per hour than the highest lead warehouse classification. The drivers are also required to have a commercial drivers license and pass a physical examination that is not required for any warehouse employee. In assessing the criteria of whether truck drivers should be included in the unit, I find that the truck drivers work is not so functionally integrated as to require a finding that an appropriate unit must include the drivers. *E.H. Koester Bakery Co.*, 136 NLRB 1006 (1962); *Pacemaker Mobile Homes*, 194 NLRB 742 (1971); *Airco, Inc.*, 273 NLRB 348 (1984).

I further find, based upon their work functions, and skills, the location of their work and their infrequent contact with warehouse employees, that the truck mechanics, truck spotters, safety lane attendants, inbound scheduler, DOT coordinator, fleet maintenance coordinator, and parts coordinator, do not share a sufficient community of interest with warehouse employees to warrant their inclusion. I shall, therefore, exclude them from the unit. However, I find that warehouse billing clerks, building maintenance, and other indirect employee do have sufficient community of interest to be included in the unit based upon their work product, location in the warehouse and contact with unit employees.

The unit sought by the Petitioner is not an appropriate unit in that the employees at the Cash and Carry location including the beverage/chemical technicians should be included in a unit of all warehouse employees. The record herein, as well as the records of which administrative notice were taken in 26-RC-6578 and 26-RC-7050, support the fact that the Cash and Carry warehouse employees and beverage/chemical technicians have a substantial community of interest with the employees sought by the Petitioner and should be included in any unit found appropriate. There is a fundamental integration of basic functions with the employees at the main warehouse with the employees at the Cash and Carry warehouse location. This record is replete with the common benefits, and community of interest shared by all warehouse employees including the employees at the Cash and Carry. They perform the same type functions on the same products in the same manner to serve the customers of the Employer. Even though they may be located 5 to 6 miles from the main warehouse they are properly included in the smallest appropriate unit herein. This is true now just as it was true in 1983 when the Region included them in the unit found appropriate and, in 1988, when the parties agreed to include them in the unit. In considering the community of interest of the employees involved including their skills, duties, and working conditions as well as the Employer's organization and supervision a unit of all warehouse employees at both locations is the smallest appropriate unit for collective bargaining.

Inasmuch as the Petitioner has stated that it did not wish to proceed to an election in any alternative unit, I shall, therefore, dismiss the petition.

CLASSIFICATION INDEX

393-6081-2050

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